IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21116 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANIBEN WD/O BHARABHAI BHOJABHAI & 2 - Petitioner(s)
Versus
SECRETARY TO GOVT. OF GUJARAT REVENUE DEPARTMENT & 2 - Respondent(s)

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Appearance :
MR CC BHALJA for Petitioner(s) : 1 - 3.
MR DIPEN DESAI, ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/11/2006

ORAL JUDGMENT

1. Rule. Mr. Desai, learned Assistant Government Pleader waives notice of rule for respondents and with consent of learned advocates appearing for both the sides, the matter is further heard for final hearing today.

2. The petitioners have approached to this Court for challenging the order passed by the Tribunal dated 02/12/2005 which appears to have been passed on the basis of the consent purshis given on behalf of petitioner Nos.2 and 3.

3. Heard Mr. Bhalja, learned counsel for the petitioners and Mr. Desai, learned Assistant Government Pleader for the respondents.

4. Upon hearing the learned advocate appearing for the petitioners as well as Mr. Desai, learned AGP for the respondents, it appears that the grievance raised by petitioner Nos.2 or 3 for challenging the order of the Tribunal cannot be entertained because it is not the case either of petitioner Nos.2 or 3 that the consent purshis was by fraud or misrepresentation or coercion etc.

4. Further, it is an admitted position that petitioner No.1 has not signed the purshis and she was party to the proceedings and therefore, it was

required for the Tribunal to either decide the matter on merits qua the rights of petitioner No.1 who was opponent No.2 in the Tribunal or in alternative, the Tribunal ought to have heard petitioner No.1 and the State Government and the matter could have been decided.

5. It appears that since the matter is only decided by the Tribunal based on the purshis of petitioner Nos.1 and 2 herein, who are opponent Nos.3 and 4 in the revision before the Tribunal, the order of the Tribunal cannot be maintained qua petitioner No.1. Mr. Desai, learned AGP submitted on behalf of the State Government that other observations made by the Tribunal are only passing observations and as such, the Tribunal has acted on the consent purshis.

6. Under the above circumstances, it appears that the matter will have to be reconsidered by the Tribunal on its merits after giving opportunity of hearing to petitioner No.1 and so far as petitioner Nos. 2 and 3 herein are concerned, who are opponent Nos.3 and 4 in the revision proceedings before the

tribunal, since the consent purshis was already filed and is acted upon, they may not be required to be heard.

7. In view of the above, the judgment and order dated 02/12/2005 passed by the Tribunal is set aside with a direction that the Tribunal shall decide the revision application in light of the observations made by this Court hereinabove in this judgment and after giving opportunity of hearing to the State Government as well as other parties to the proceedings, namely, Dy. Collector and petitioner No.1 herein-opponent No.2 in the revision proceedings as early as possible.

8. Rule is partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL,J.)

mrpandya*